

# Customs Bulletin

Regulations, Rulings, Decisions, and Notices  
concerning Customs and related matters



## and Decisions of the United States Court of Customs and Patent Appeals and the United States Customs Court

Vol. 8

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JANUARY 9, 1974

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No. 2

*This issue contains*

T.D. 74-9 and 74-10

C.D. 4492

C.R.D. 73-36

Protest abstracts P73/1041 through P73/1078

Reap. abstracts R73/353 through R73/365

DEPARTMENT OF THE TREASURY  
U.S. Customs Service

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# U.S. Customs Service

(T.D. 74-9)

## *Foreign currencies—Certification of rates*

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York

DEPARTMENT OF THE TREASURY,  
OFFICE OF THE COMMISSIONER OF CUSTOMS,  
Washington, D.C., December 19, 1973.

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified the following rates of exchange which varied by 5 per centum or more from the quarterly rate published in Treasury Decision 73-294 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following daily rates:

### Austria schilling:

December 10, 1973	\$0.0513
December 11, 1973	.0513
December 12, 1973	.0515
December 13, 1973	.0514
December 14, 1973	.0513

### Belgium franc:

December 10, 1973	\$0.024865
December 11, 1973	.024845
December 12, 1973	.024870
December 13, 1973	.024860
December 14, 1973	.024880

### Denmark krone:

December 10, 1973	\$0.1602
December 11, 1973	.1605
December 12, 1973	.1613
December 13, 1973	.1618
December 14, 1973	.1611

## France franc :

December 10, 1973	-----	\$0. 2195
December 11, 1973	-----	. 2193
December 12, 1973	-----	. 2196
December 13, 1973	-----	. 2196
December 14, 1973	-----	. 2192

## Germany deutsche mark :

December 10, 1973	-----	\$0. 3776
December 11, 1973	-----	. 3779
December 12, 1973	-----	. 3795
December 13, 1973	-----	. 3786
December 14, 1973	-----	. 3776

## India rupee :

December 12, 1973	-----	\$0. 1230
December 13, 1973	-----	. 1230
December 14, 1973	-----	. 1230

## Italy lira :

December 10, 1973	-----	\$0. 001639
December 11, 1973	-----	. 001644
December 12, 1973	-----	. 001652
December 13, 1973	-----	. 001651
December 14, 1973	-----	. 001650

## Japan yen :

December 10, 1973	-----	\$0. 003570
December 11, 1973	-----	. 003570
December 12, 1973	-----	. 003571
December 13, 1973	-----	. 003570
December 14, 1973	-----	. 003570

## Netherlands guilder :

December 10, 1973	-----	\$0. 3550
December 11, 1973	-----	. 3547
December 12, 1973	-----	. 3573
December 13, 1973	-----	. 3577
December 14, 1973	-----	. 3567

## Portugal escudo :

December 10, 1973	-----	\$0. 0398
December 11, 1973	-----	. 0396
December 12, 1973	-----	. 0398
December 13, 1973	-----	. 0396
December 14, 1973	-----	. 0395

## Swedish krona:

December 10, 1973-----	\$0. 2210
December 11, 1973-----	. 2212
December 12, 1973-----	. 2211
December 13, 1973-----	. 2211
December 14, 1973-----	. 2203

## Switzerland franc:

December 10, 1973-----	\$0. 3132
December 11, 1973-----	. 3127
December 12, 1973-----	. 3134
December 13, 1973-----	. 3131
December 14, 1973-----	. 3126

(LIQ-3-O:A:E)

JAMES D. COLEMAN,  
*Acting Director, Appraisal  
 and Collections Division.*

[Published in the Federal Register January 4, 1974 (39 FR 1079) ]

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(T.D. 74-10)

*Foreign currencies—Daily rates for countries not on quarterly list*

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Hong Kong dollar, Iran rial, Philippine peso, Singapore dollar, Thailand baht (tical)

DEPARTMENT OF THE TREASURY,  
 OFFICE OF THE COMMISSIONER OF CUSTOMS,  
 Washington, D.C., December 18, 1973.

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates in U.S. dollars for the dates and foreign currencies shown below. These rates of exchange are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR, Part 159, Subpart C).

Hong Kong dollar:	Official	Free
November 19, 1973----	\$0. 1970	\$0. 197335*
November 20, 1973----	. 1975	. 197482*
November 21, 1973----	. 1975	. 197482*
November 22, 1973----	Holiday	
November 23, 1973----		. 197530*

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\*Certified as nominal

## Iran rial:

December 3, 1973	-----	\$0. 0149
December 4, 1973	-----	. 0149
December 5, 1973	-----	. 0149
December 6, 1973	-----	. 0145
December 7, 1973	-----	. 0145

## Philippine peso:

December 3, 1973	-----	\$0. 1490
December 4, 1973	-----	. 1490
December 5, 1973	-----	. 1490
December 6, 1973	-----	. 1480
December 7, 1973	-----	. 1480

## Singapore dollar:

For the period December 3 through December 7,  
1973, rate of \$0.4075.

## Thailand baht (tical):

December 3, 1973	-----	\$0. 0495
December 4, 1973	-----	. 0495
December 5, 1973	-----	. 0495
December 6, 1973	-----	. 0490
December 7, 1973	-----	. 0490

(LIQ-3-O:A:E)

R. N. MARRA,  
*Director, Appraisement  
and Collections Division.*

# Decisions of the United States Customs Court

United States Customs Court

One Federal Plaza  
New York, N.Y. 10007

*Chief Judge*

Nils A. Boe

*Judges*

Paul P. Rao

Morgan Ford

Scovel Richardson

Frederick Landis

James L. Watson

Herbert N. Maletz

Bernard Newman

Edward D. Re

*Senior Judges*

Charles D. Lawrence

David J. Wilson

Mary D. Alger

Samuel M. Rosenstein

*Clerk*

Joseph E. Lombardi

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## *Protest Decisions*

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(C.D. 4492)

SEARS, ROEBUCK AND Co. v. UNITED STATES

### *Jewelry boxes of wood (musical)*

The classified merchandise is a musical jewelry box consisting of leatherette, metal, wood and textile fabric materials. It is conceded that of those materials, the component material of chief value is the metal.

TSUS item 204.50 classifies jewelry boxes of wood lined with textile fabrics. On these cross-motions for summary judgment, the question whether the provision for jewelry boxes of wood is limited by definition in TSUS General Headnote 9(f) to jewelry boxes

wholly or in chief value of wood is answered in the affirmative with judgment for defendant.

As defined in TSUS, unless the context otherwise requires, the term "of" when used between the description of an article and a material means that the article is wholly or in chief value of the named material. In the usual case, excepting the unusual case where reading a definition in mechanical fashion would create obvious incongruities in the classification of articles, or destroy a major purpose sought to be achieved by the classification, statutory definitions control the meaning of statutory words, *Larson v. Surawnee Fruit & Steamship Co. et al.*, 336 U.S. 198, 201 (1949). There would be little use in a glossary of definitions if the court were free to choose a meaning for itself. *Fox v. Standard Oil Co.*, 294 U.S. 87, 96 (1935). In a context not requiring otherwise, the term "of" used between the description jewelry boxes and the material wood is, by definition, an artfully defined classification by component of chief value.

Court No. 60/1651

Port of New York

[Judgment for defendant.]

(Decided December 14, 1973)

*Lane, Young & Fox* (Ellsworth F. Qualey of counsel) for the plaintiff.

*Irving Jaffe*, Acting Assistant Attorney General (*Steven P. Florsheim*, trial attorney), for the defendant.

LANDIS, Judge: The issue in this case presented by the cross-motions of both sides for summary judgment<sup>1</sup> is whether the instant merchandise, imported from Japan and represented by the description on the invoice as "Leatherette Ballerina Box - Stock No. 4837", was properly classified by customs as articles not specially provided for of a type used for household use, of metal, under TSUS item 654.20,<sup>2</sup> or should be classified, as claimed by plaintiff in its complaint, as jewelry boxes of wood under TSUS item 204.50.<sup>3</sup>

Incorporated in the imported box in question is a musical movement which is wound by a key. When the lid of the box is opened the musical movement is released and the ballerina pirouettes in simulated dance to the musical tune of the movement.<sup>4</sup>

<sup>1</sup> Customs Court rule 8.2.

<sup>2</sup> Dutiable at 15 per centum ad valorem.

<sup>3</sup> Dutiable at 2 cents per pound, plus 4.5 per centum ad valorem.

<sup>4</sup> Defendant has agreed that the sample box submitted by plaintiff with its motion is representative of the imported merchandise in all material respects.



TSUS items 654.20 and 204.50 are inferior tariff headings indented under superior tariff headings, in pertinent part, as follows:

Classified:

SCHEDULE 6. — METALS AND METAL PRODUCTS

PART 3. — METAL PRODUCTS

	*	*	*	*	*	*	*
	Articles not specially provided for of a type used for household, table, or kitchen use; toilet and sanitary wares; all the foregoing and parts thereof, of metal:						
	Articles, wares, and parts, of precious metal, * * *:						
	Of silver:						
	* * * * *						
653.65	Other -----						* * *
	Articles, wares, and parts, of base metal, coated or plated with precious metal:						
	* * * * *						
	Articles, wares, and parts, of base metal, not coated or plated with precious metal:						
	Of iron or steel:						
	* * * * *						
	Of copper:						
	* * * * *						
654.10	Of aluminum -----						* * *
	* * * * *						
654.15	Of tin -----						* * *
654.20	Other -----						15% ad val.

Claimed:

SCHEDULE 2. — WOOD AND PAPER; PRINTED MATTER

PART 1. — WOOD AND WOOD PRODUCTS

	*	*	*	*	*	*	*
	Jewelry boxes, silverware chests, cigar and cigarette boxes, microscope cases, tool or utensil cases, and similar boxes, cases, and chests, all the foregoing of wood:						
204.35	Cigar and cigarette boxes -----						* * *
	Other:						
204.40	Not lined with textile fabrics ---						* * *
204.50	Lined with textile fabrics -----						2¢ per lb. + 4.5% ad val.

It appears from the pleadings that there is no dispute between the parties as to the fact that the imported boxes in question are musical jewelry boxes consisting of leatherette, metal, wood and textile fabric materials and that the imported boxes are in chief value of metal (base metal, not plated or coated with precious metals). The determinative question in this case is whether plaintiff's claimed tariff provision for jewelry boxes of wood is limited by definition in TSUS General Headnote 9(f) to jewelry boxes wholly or in chief value of wood. Upon the considerations herein next discussed, I conclude that it is.

TSUS defines <sup>5</sup> the use of particular tariff terms, in relevant part, as follows:

9. Definitions. For the purposes of the schedules, unless the context otherwise requires—

\* \* \* \* \*

(f) the terms "of," "wholly of," "almost wholly of," "in part of" and "containing", when used between the description of an article and a material (e.g., "furniture of wood", "woven fabrics, wholly of cotton", etc.), have the following meanings:

(i) "of" means that the article is wholly or in chief value of the named material;

(ii) "wholly of" means that the article is, except for negligible or insignificant quantities of some other material or materials, composed completely of the named material;

(iii) "almost wholly of" means that the essential character of the article is imparted by the named material, notwithstanding the fact that significant quantities of some other material or materials may be present; and

(iv) "in part of" or "containing" mean that the article contains a significant quantity of the named material.

With regard to the application of the quantitative concepts specified in subparagraphs (ii) and (iv) above, it is intended that the de minimis rule apply

Plaintiff does not dispute that the term "of", in the claimed classification "jewelry boxes \* \* \* of wood" is used between the description of an article and a material. The thrust of plaintiff's contention is that, notwithstanding the term "of" is defined to mean that the described article is wholly or in chief value of the named material, the context of the classification "jewelry boxes \* \* \* of wood" requires or indicates that as a matter of law the classification refers to "a general composition and not chief value of the named material", citing *Oxford Inter-*

<sup>5</sup> TSUS, General Headnotes and Rules of Interpretation, headnote 9.

*national Corp. v. United States*, 68 Cust. Ct. 12, C.D. 4326 (1972), *appeal dismissed*, 59 CCPA —.<sup>6</sup>

The merchandise in the *Oxford* case consisted of varied lengths of wire cable, imported for use with the caliper brakes of bicycles, encased in plastic covering and fitted at either end with pieces known as barrel and ferrule ends. The government classified the cable under the TSUS heading for parts of bicycles (item 732.36). *Oxford* claimed the cable was properly classifiable under the tariff heading, "Strands, ropes, cables, and cordage, all the foregoing, of wire, whether or not cut to length, and whether or not fitted with hooks, swivels, clamps, clips, thimbles, sockets, or other fittings or made up into slings, cargo nets, or similar articles." (Item 642.20, emphasis added.) The government in *Oxford*, *inter alia*, contended that the term "of wire", in the tariff heading last quoted, meant cable wholly or in chief value of wire material, and that the component of chief value in the *Oxford* cable was not shown to be wire. The First Division of the Customs Court sustained the *Oxford* claim and discussed the government's contention with respect to the term "of wire" as follows:

This relates to our understanding of the claimed provision as covering cables whose composition is wire, that is to say, made of wire as opposed to fiber for example, and not necessarily cables which are in chief value of wire. Logically, if the tariff schedules envision the fashioning of cables into articles, there is always the possibility of non-wire components. In addition, it is entirely possible that a particularly complex fitting may have a value greater than the length of cable to which it is attached. In all, the particular construction of the provision for cables, allowing as it does for the addition of fittings and the fabrication of cable into complete articles, suggests that it would be unjustifiably restrictive to demand that the wire always be the component of chief value. This provision is one in which the context requires that the term "of", used between the description of an article and a material, refers to general composition and not chief value of the named material as in the general rule. (See General Headnotes and Rules of Interpretation 9(f)(i).) In our view, the legislative concern in this provision is that the essential force transmitting or weight supporting component be wire. That is clearly the case with the importations herein.

In sum, we find that the articles imported are cables which come within the scope of the provision in item 642.20 for cables fitted with fittings or made up into articles. That provision is more spe-

<sup>6</sup> Government officials, charged with administration of the tariff schedules, apparently chose to limit the decision to the cable in that case because they believe the cable to be in chief value of wire. Said officials remain of the opinion that the term "of wire" means an article must be wholly or in chief value of wire and the *Oxford* determination that it does not "results in a confusion of the statutory definition for the terms 'of' and 'almost wholly of' set by General Headnote 9(f) TSUS" (quoted in this opinion decision), 7 Customs Bulletin —, T.D. 73-2 (1972).

cific than the provision for parts of bicycles and should prevail in accordance with General Interpretative Rule 10(ij). [68 Cust. Ct. at 16-17.]

The *Oxford* decision (a case involving the tariff term "cables, \* \* \* of wire"), whatever its precedential value may be, of course does not necessarily control the TSUS classification "jewelry boxes \* \* \* of wood". At the most it opens the door to plaintiff's creditable, but not necessarily convincing argument, that the tariff heading "jewelry boxes \* \* \* of wood" is intended to classify, not jewelry boxes wholly or in chief value of wood, but jewelry boxes in which the essential composition material, without which there would be no box, is wood. As plaintiff would have it, the addition of the musical movement does not make the box anything more or anything less than what it is, namely, a wooden jewelry box. Except to recognize the possible credence they might give to plaintiff's argument, there is no need to discuss *United States v. Woodruff*, 175 F. 776, T.D. 30211 (1909); *United States v. Hempstead*, 175 F. 966, T.D. 30366 (1910), and *United States v. Zinn & Co.*, 2 Ct. Cust. Appls. 419, T.D. 32171 (1912) cited by plaintiff on that point. Those three cases were decided under tariff acts which did not purport to define the term "of" used between the description of an article and a material. It is obvious the court is not here bound by judicial determinations that did not involve definition of the term "of". Cf. *Victor England Agencies, Inc. v. United States*, 63 Cust. Ct. 180, C.D. 3894 (1969).<sup>7</sup>

The decisions in *Blumenthal & Co. et al. v. United States*, 5 Ct. Cust. Appls. 327, T.D. 34529 (1914), and *Israel Menchaca v. United States*, 55 Cust. Ct. 494, Abstract 69660 (1965), which plaintiff cites for the proposition that "there are times when the classification of an article may be governed by its predominant component [material] rather than its component material of chief value", similarly, are cases decided under tariff acts which did not purport to define the term "of" used between the description of an article and a material. The predominant material concept of classification under earlier tariff act does, however, merit discussion with respect to plaintiff's theory that the term "jewelry boxes" is an *eo nomine* classification of an article more specific than the general TSUS heading selected by the government in classifying the boxes as articles not specially provided for of a type used for household use.<sup>8</sup>

<sup>7</sup> For the same reason the court is not bound to follow *Keuffel & Esser Co. v. United States*, 35 Cust. Ct. 343, Abstract 59557 (1955), cited by plaintiff in support of its point that the heading "jewelry boxes \* \* \* of wood" does not mean wholly or in chief value of wood.

<sup>8</sup> Aside to this point, it is well to note that what is being tested on these cross-motions is not the validity of the government classification but the validity of plaintiff's claim for classification as "jewelry boxes \* \* \* of wood". Cf. *Morris Friedman v. United States*, 5 CCPA 53, C.A.D. 819 (1963). If plaintiff's claimed classification is valid, other considerations aside, plaintiff is entitled to prevail.

In a recent decision on classification under the 1930 Act, not involving definition of the term "of", the court of appeals in *Styson Art Products Company v. United States*, 60 CCPA —, C.A.D. 1083 (1973), discussed the essence of the predominant material exception to the general rule that classification under a tariff provision for articles made of a specific material requires the article be wholly of the specified material or in chief value thereof, as follows:

\* \* \* That exception exists where the predominant material, though not the material of chief value, nevertheless gives to the article its name, form and shape and determines its character and use. *Blumenthal & Co. v. United States*, 5 Ct. Cust. Appls. 327, T.D. 34529 (1914).

At first blush, this test might seem to apply here. However, in *Blumenthal* and the other cases cited by appellant, the exception is recognized when the article is referred to *eo nomine* in a pertinent paragraph. In *Blumenthal* (at 330), the court said that classification by predominant material would require, in addition to the factors listed above, that it "clearly appear that in the common understanding the *eo nomine* statutory description included the article under consideration without regard to its component material of chief value."

In the present case, it cannot be said that paragraph 412 is an *eo nomine* designation for food picks. We are not inclined to extend the exception to paragraph 412 as we are not persuaded it was meant to include articles predominantly of wood without regard to the component of chief value. Therefore, appellant, having failed to prove the component of chief value in the food picks was wood, we affirm the Customs Court.

Plaintiff underscores its case for applying the predominant material exception to the *eo nomine* classification "jewelry boxes \* \* \* of wood" by noting that significantly it is the wood that gives the jewelry boxes their name, form, shape and determines their character and use. But as noted in the *Styson* quote, above, even under earlier tariff acts the *eo nomine* statutory description had to clearly appear as a description without limitation. The *eo nomine* term "jewelry boxes", under consideration here, is a description of articles limited by material to those "of wood" and the term "of", in that context, is defined by statute to mean wholly or in chief value of the material, to wit, wood. Pertinent to this point of discussion, and as defendant observes in its brief, plaintiff's contention would, in my opinion, require only that the essential character of a jewelry box be imparted by the material wood. The statutory term used by the lawmakers between the description of an article and a material, appropriate to that result, is the term "almost wholly of", which as defined in General Headnote 9(f), *supra*, "means that the essential character of the article is imparted by the named material, notwithstanding the fact that significant quantities of some other

material or materials may be present." The meaning of the term "almost wholly of" is, in essence, a codification of the predominant material exception judicially engrafted as appropriate to determine particular classifications under tariff acts using common but undefined tariff terms and descriptive methods.<sup>9</sup> Whatever else may be said, assuming the term "almost wholly of" is not the codification of the predominant material exception I read it to be, judicial precedents in the context of undefined classification terms, should not be substituted for the definitions set by the lawmakers with instructions to apply them in the appropriate context. "There would be little use in such a glossary [of definitions] if \* \* \* [the court] were free in despite of it to choose a meaning for \* \* \* [itself]." *Fox v. Standard Oil Co.*, 294 U.S. 87, 96 (1935).

Except in an unusual case, where reading the definitions in mechanical fashion would create obvious incongruities in the classification of articles, or destroy a major purpose sought to be achieved by the classification, statutory "definitions control the meaning of statutory words, \* \* \* in the usual case." *Lawson v. Swanee Fruit & Steamship Co., et al.*, 336 U.S. 198, 201 (1949). Nothing, either in the submitted facts or plaintiff's argument of the motion, makes this an unusual case wherein the context not be read to refer to something other than the component of chief value. Indeed, in the absence of a compelling reason for not doing so, failure to heed the definition, cf. *United States v. Mitsubishi International Corp.*, 60 CCPA —, C.A.D. 1085 (1973), might well destroy the major purpose of the general heading definitions which is to standardize the meaning of terms used in the classification of articles.<sup>10</sup>

Jewelry boxes of wood is a superior tariff heading with an inferior heading (item 204.50) indented under it classifying jewelry boxes of wood lined with textile fabrics. Plaintiff's stated point that the inferior heading of item 204.50, "lined with textile fabrics", broadens the superior heading "jewelry boxes \* \* \* of wood" is not persuasively developed, and, if nothing else, is contrary to the general interpretative rule that "a superior heading cannot be enlarged by inferior

<sup>9</sup> See, Tariff Classification Study, Submitting Report (1960), pages 12, 13 (discussion report of problems associated with some of the more commonly used tariff terms and descriptive methods, and the substantial reduction of those problems (albeit not entirely eliminating) in standardization of language by definition).

<sup>10</sup> The rationale of *J. E. Bernard & Company, Inc. v. United States*, 40 Cust. Ct. 563, Abstract 61971 (1958) (a musical movement incorporated into an article that was part of a cigarette lighter held properly assessed as part of a cigarette lighter rather than as a music box), and of *Thorens, Inc. v. United States*, 31 CCPA 125, C.A.D. 261 (1943) (a toilet roll holder equipped with a musical movement held dutiable as a manufacture in chief value of wood rather than as a music box), cited by plaintiff as factually involving a musical movement incorporated into an article analogous to the musical jewelry box in this case (but which cases did not involve the term "of"), offer no compelling reason for not applying the term, "of" as it appears in the statute.

<sup>11</sup> TSUS item 725.50 classifies "music boxes".



headings indented under it but can be limited thereby.”<sup>11</sup> Somewhat in the same vein, plaintiff notes the Tariff Classification Study discussion of items 204.35 and 204.50,<sup>12</sup> and the statement there that “jewelry boxes \* \* \* of wood” must be made of wood. That rather obvious statement about the products classified by those items does not make out a case, one way or the other, for saying that the products must or must not be in chief value of wood. Use of the term “of” between the description of an article and the material wood, to wit, articles “of wood” is consistent throughout the classifications in schedule 2, part 1, subparts D, E, and F. In only two instances do the superior headings in those subparts not use the term “of wood”. (See superior headings to items 206.30, 206.65 and 206.67.) In those instances, the term “of wood” does not appear and as discussed in the Study,<sup>13</sup> other words were added to the superior heading to “eliminate the problems connected with the determinations of the component material of chief value.” The lawmakers’ awareness of the problems associated with determining the component of chief value, and the manner in which the problem was specifically dealt with in those two contextual instances, though its force may not be great, extrinsically tokens the lawmakers’ intention that, notwithstanding such problems, and in a context not otherwise, the tariff term “of” used between the description of the article (jewelry boxes) and the material (wood) be recognized as an artfully defined classification by component of chief value. I conclude, therefore, that as a matter of law item 204.50 classifying “jewelry boxes \* \* \* of wood” includes here only those jewelry boxes wholly or in chief value of wood. Since the imported jewelry boxes are concededly in chief value of metal, they are not classifiable under item 204.50.

Plaintiff’s motion for summary judgment is denied. Defendant’s cross-motion for summary judgment is granted.

The claim for classification under item 204.50 is overruled.

Judgment will enter accordingly.

<sup>11</sup> TSUS, General Headnote 10(c) (1).

<sup>12</sup> Tariff Classification Study, Schedule 2, pp. 26, 27.

<sup>13</sup> Tariff Classification Study, Schedule 2, pp. 27, 28.

# Decisions of the United States Customs Court

## *Custom Rules Decision*

(C.R.D. 73-36)

H. REISMAN CORP. v. UNITED STATES

*Opinion and Order on Defendant's Withdrawal of Motion To Dismiss*

Court No. 70/45119

[Withdrawal of motion allowed, but papers to be retained in official file.]

(Dated December 13, 1973)

*Barnes, Richardson & Colburn (Rufus E. Jarman, Jr., of counsel) for the plaintiff.*

*Irving Jaffe, Acting Assistant Attorney General (Herbert P. Larsen, trial attorney), for the defendant.*

NEWMAN, Judge: On October 1, 1973 defendant moved to dismiss this action as prematurely filed under 19 U.S.C. § 1514 (1964) on the ground that the liquidation was void. In response to the motion, plaintiff noted its "no objection" thereon on October 26, 1973.

Subsequently, on December 4, 1973 defendant filed a "Statement in Withdrawal of Motion By Defendant for Dismissal", indicating that "defendant no longer desires the entry of the proposed order attached to the motion aforesaid", and requesting "withdrawal of all motion papers filed on October 1, 1973, herein, and return of said papers to the office of counsel for defendant".

On December 6, 1973 plaintiff filed an opposition to defendant's statement of December 4, 1973 stating that plaintiff did not oppose withdrawal of the motion by defendant, but objecting to the physical withdrawal of the motion papers from the court file and return to the Government. Plaintiff insists that the motion papers are part of the official file and that defendant "is not free to make portions of the official record herein disappear as if they had never existed". Additionally, plaintiff points out that by noting its "no objection" on the motion,



the motion papers have to that extent become plaintiff's as well as defendant's papers, which defendant has no right to withdraw from the file without plaintiff's consent.

I agree.

In view of the foregoing circumstances, defendant's motion to dismiss this action may be deemed withdrawn, but plaintiff's objection to the physical withdrawal of the motion papers and return of them to defendant is sustained. Accordingly, it is hereby ORDERED: The motion papers herein, to which plaintiff has noted its "no objection", shall remain in the court file as part of the official record in this case.



# Decisions of the United States Customs Court

## *Abstracts Abstracted Protest Decisions*

### CUSTOMS COURT

17

DEPARTMENT OF THE TREASURY, December 17, 1973.

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

VERNON D. ACREE,  
*Commissioner of Customs.*

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
P73/1041	Boe, C. J. December 11, 1973	B & H Importing Corp.	70/60469	Par. or Item No. and Rate  Item 706.24 32%	Par. or Item No. and Rate  Item 700.60 20%	Judgment on the pleadings	New York Slipper bags (entirety with slippers)

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED		HELD		BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate	Par. or Item No. and Rate	Par. or Item No. and Rate		
F73/1042	Boe, C. J. December 11, 1973	John Hull Outlers, dba General Silver Co. et al.	70/62112, etc.	Item 661.75 Various ad valorem equivalent rates as set forth in schedule A, attached to decision and judgment, in column headed "Assessed Ad Valorem Equivalent Rate"	Item 661.75 At appropriate specific or compound rate of duty as set forth in column of said schedule headed "Claimed Rate"; said rate being applied once against each tool, knife, fork, spoon or other utensil in the set	Item 661.75 At appropriate specific or compound rate of duty as set forth in column of said schedule headed "Claimed Rate"; said rate being applied once against each tool, knife, fork, spoon or other utensil in the set		Import Associates of Ameri- ca et al. v. U.S. (C.A.D. 901)	New York Flatware sets
F73/1043	Boe, C. J. December 11, 1973	New York Merchandise Co., Inc.	60/6112	Item 389.40 25¢ per lb. plus 32.5%	Item 700.55 12.5%	Item 700.55 12.5%		Judgment on the pleadings	San Diego Slipper pouches
F73/1044	Boe, C. J. December 11, 1973	Soderhamn Machine Man- ufacturing Company	67/84366	Par. 372 184%	Par. 372 84%	Par. 372 84%		Judgment on the pleadings U.S. v. Soderhamn Mfg. Co. (C.A.D. 906)	Baltimore Chippers and parts
F73/1045	Ford, J. December 11, 1973	S. S. Kresge Co.	63/14457	Par. 131 or 1531/1559(a) 20%	Par. 303 124%	Par. 303 124%		Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977)	New York Leather cases Imported with radios with which they are used

P73/1046	Landis, J. December 11, 1973	Bausl Products Corporation et al.	68/2803, etc.	Item 546.35 23.5%	Item 645.27 0.4¢ per lb.	Fontana Hollywood Corp. v. U.S. (C.D. 3981)	New York Long neck bottles
P73/1047	Landis, J. December 11, 1973	J. Gerber & Co., Inc.	67/7647, etc.	Item 610.90 19%	Item 606.26 10.5%	J. Gerber & Co., Inc., et al. v. U.S. (C.D. 3773, aff'd C.A.D. 1013)	Tampa Iron and steel forgings
P73/1048	Walton, J. December 11, 1973	Oscar Leistner, Inc.	68/90630	Item 748.20 26.5%	Item 774.60 16%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279)	Seattle Artificial flowers, etc.
P73/1049	Maletz, J. December 11, 1973	Eldon Industries, Inc., et al.	69/27128, etc.	Item 737.50 37%	Item 735.20 18%	Montgomery Ward & Co. v. U.S. (C.D. 4195)	Los Angeles Mechanical shooting galleries, target games and parts thereof
P73/1050	Maletz, J. December 11, 1973	Imperial Imports Co., Inc.	70/56101	Item 737.30 14%	Item 684.23 11.5%	U.S. v. New York Merchandise Co., Inc. (C.A.D. 1094)	New York Foodie dog radios
P73/1051	Maletz, J. December 11, 1973	Topp Import & Export, Inc., et al.	69/42238, etc.	Item 737.20 35%	Protests premature; appraisalment and liquidation not in accordance with law; protests dismissed; district director to take appropriate action	United Merchandise Corp. et al. v. U.S. (C.D. 2313)	Los Angeles Doll radios with batteries appraised and classified as endrites; separate tariff entries
P73/1052	Newman, J. December 11, 1973	New York Merchandise Co., Inc.	66/43824	Par. 915/1559 (a) 25%	Par. 1332(b)/1559 (a) 15%	Judgment on the pleadings	New York Vinyl mittens

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED		HELD		BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate		Par. or Item No. and Rate			
P73/1053	Boe, C. J. December 13, 1973	B & H Importing Corp.	69/43734	Item 708.24 36%		Item 703.60 20%		Judgment on the pleadings	New York Slipper bags
P73/1054	Boe, C. J. December 13, 1973	Fanon Electronic Industries, Inc.	67/60217, etc.	Item 694.02 17.5% or 15.5%		Item 683.22 or 685.25 12.5% or 11%		Agreed statement of facts	Los Angeles Intercoms
P73/1055	Boe, C. J. December 13, 1973	Gillett & Sibert, U.S.A. Inc.	70/53067	Item 708.75 36% or 31%		Item 708.76 10% or 12%		Agreed statement of facts	Houston Compound optical microscopes, and accessories, etc., imported together; an entirety
P73/1056	Boe, C. J. December 13, 1973	Chas. Gliman & Sons, Inc.	68/55210	Duty assessed on 100 cases of liquor, although 6 cases were reported manipulated, but not found		District director shall reliquidate entry and make an allowance in duty for 6 cases which were not found for delivery to importer		Judgment on the pleadings	Boston Shortage of alcoholic beverages
P73/1057	Boe, C. J. December 13, 1973	C. L. Hutchins & Co., Inc. Imperial Rug Mills, Inc.	66/6130, etc.	Item 360.40 94 or 84 per lb.		Item 708.00 4% or 3%		Hoyt, Sherston & Scharoni et al. v. U.S. (C.D. 2762) J. M. Evans & Company v. U.S. (C.D. 3800)	San Diego Used papermakers' dryer felts, useless for original purpose; fit only for remanufacture for other purposes

CUSTOMS COURT

21

P73/1038	Boe, C. J. December 13, 1973	New York Merchandise Co., Inc.	66/6121	Item 389.40 25¢ per lb. plus 32.5%	Item 700.55 12.5%	Judgment on the pleadings	San Diego Slipper pouches
P73/1059	Boe, C. J. December 13, 1973	Noreca Corporation	70/27875, etc.	Item 657.35 13.5% plus 1¢ per lb., and 12% plus 1¢ per lb.	Item 651.00 9% and 8%	Judgment on the pleadings	New York Brass shower heads or ball joint shower heads
P73/1060	Boe, C. J. December 13, 1973	1-2 Kangaroo	68/20066	Item 737.90 35%	Item 737.55 18.5%	Judgment on the pleadings	New York Toy building blocks, bricks or shapes
P73/1061	Boe, C. J. December 13, 1973	1-2 Kangaroo	69/21699	Item 737.90 35%	Item 737.55 18.5%	Judgment on the pleadings	New York Toy building blocks, bricks or shapes
P73/1062	Boe, C. J. December 13, 1973	Pitney-Bowes, Inc.	70/34453	Item 657.20 17%	Item 673.20 9%	Judgment on the pleadings	New York Hand letter openers
P73/1063	Boe, C. J. December 13, 1973	Tempo Graphic Arts, Inc.	68/20305, etc.	Item 271.70 8.5%	Item 805.00 Free of duty	Agreed statement of facts	New York American goods returned (positives, negatives and sets of films)
P73/1064	Rao, J. December 13, 1973	The Nishio American Corp.	69/28214, etc.	Par. 919 25%	Par. 919 20%	The Nishio American Corp. v. U.S. (C.D. 1003)	New York Shirt portions of corduroy longie sets; entireties

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED		HELD		BASIS	PORT OF ENTRY AND MERCHANDISE
				Per or Item No. and Rate	Per or Item No. and Rate	Per or Item No. and Rate	Per or Item No. and Rate		
F72/1005	Maletz, J. December 13, 1973	Far Eastern Markets, Inc.	66/51561	Item 737.30 18%	Separate entities; merchandise not appraised and liquidated ac- cording to law; protest pre- mature and dis- missed; entry returned to re- gional com- missioner for appropriate administrative action			Summary judgment U.S. v. New York Merchan- dise Co., Inc. (C.A.D. 1091)	New York Stuffed animal radios im- ported with and ap- praised, and classified as entireties with batteries; separately dutiable articles
F72/1006	Newman, J. December 13, 1973	Ford Motor Company	68/56692	Item 557.20 17%	Item 556.00 Free of duty			Ford Motor Company v. U.S. (C.D. 4380)	Duluth Cabs
F72/1007	Re, J. December 13, 1973	Propper Mfg. Co., Inc.	70/10246	Item 709.05 45%	Item 704.17 10.5%			Judgment on the pleadings	New York Otosopes with bulbs
F72/1008	Bos, C. J. December 14, 1973	Burroughs Corporation	69/23643	Item 687.60 10%	Item 687.10 6.5%			Agreed statement of facts	New York "Indicator display tubes" and "Nixie display tubes" which are electric discharge lamps



# CUSTOMS COURT

23

P73/1069	Boe, C. J. December 14, 1973	Everbest Jewelry Corp.	70/4635	Item 433.40 19%	Liquidation void; protest pre- mature and dis- missed; entry returned to regional com- missioner for appropriate administrative action	Agreed statement of facts	New York Two separate tariff enti- ties: bicycle front lamps of metal and bicycle rear directional signals
P73/1070	Boe, C. J. December 14, 1973	Organon, Inc.	73-5-01139	Item 437.57 9%	Item 437.58 2.4%	Agreed statement of facts	New York Hormones, not artificially mixed; derived from nat- ural secretions of animal organs; molecular struc- ture as found in nature not changed
P73/1071	Boe, C. J. December 14, 1973	Railway Express Agency, Inc., s/o Kierpak Case- co Mfg. Co. et al.	63/21337, etc.	Par. 1437 (b)/ 1359(a) 13 4/5%	Par. 1559/1559 (a) 8 1/2%	International Polyethylene Bag Co., Inc. v. U.S. (C.D. 4071)	Los Angeles Polyethylene bags
P73/1072	Boe, C. J. December 14, 1973	S.G.B. Epic Co.	71-10-01550- 8	Item 457.20 13%	Item 604.10 7%	Agreed statement of facts	New York Vertical steel shores (Items 2E and 3E)
P73/1073	Boe, C. J. December 14, 1973	C.J. Tower & Sons of Buf- falo, Inc.	71/102	Item 724.10 0.75¢ per linear foot	Item 870.30 Free of duty	Agreed statement of facts	Buffalo-Niagara Falls Developed photographic film, including motion picture film on which pictures or sound and pictures have been recorded

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED		HELD		BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate	Par. or Item No. and Rate	Par. or Item No. and Rate		
P73/1074	Ford, J. December 14, 1973	Marubeni Iida America, Inc.	63/7783, etc.	Par. 353 15%	Par. 353 13 1/4% or 12 1/2%			Midland International Cor- poration v. U.S. (C.D. 3217) North American Foreign Trading Corp. v. U.S. (C.D. 8068)	New York Earphones
P73/1075	Ford, J. December 14, 1973	New York Merchandise Co., Inc.	63/4985	Par. 1529(a)/ 1539(a) 45%	Par. 1538 10%			New York Merchandise Co., Inc. v. U.S. (C.D. 4067)	Portland, Oreg. Plastic dollies, bureau covers or table scarves
P73/1076	Richardson, J. December 14, 1973	Fedtro, Inc	63/40267	Item 685.30 17.5%	Item 685.70 8.5%			Fedtro, Inc. v. U.S. (C.A.D. 1028)	New York 4-Way flasher switches
P73/1077	Landis, J. December 14, 1973	Asiatic Petroleum Corp.	65/12558, etc.	Par. 1558 10%	Par. 1733 Free of duty			Asiatic Petroleum Corp. v. U.S. (C.A.D. 1029)	New York Shell Alkyl Oil A
P71/1078	Watson, J. December 14, 1973	Pharmacia Fine Chemi- cals, Inc.	67/82813, etc.	Par. 11 3 1/4¢ per lb. plus 25%	Par. 1558 10%			Pharmacia Laboratories, Inc. v. U.S. (C.D. 4190)	New York A complex chemical substance

# Decisions of the United States Customs Court *Abstracts* *Abstracted Reappraisal Decisions*

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R73353	Re J. December 11, 1973	Balfour, Guthrie & Co., Ltd., et al.	R58/16647, etc.	Export value: Net appraised value less 7 1/4%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Portland, Oreg. Japanese plywood
R73354	Re J. December 11, 1973	The Beton Co., Inc., et al.	R59/16981, etc.	Export value: Net appraised value less 7 1/4%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Longview (Portland, Oreg.) Japanese plywood
R73355	Re J. December 11, 1973	Borneo Sumatra Trading Co., Inc., et al.	R58/18803, etc.	Export value: Net appraised value less 7 1/4%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Houston Japanese plywood
R73356	Re J. December 11, 1973	Borneo Sumatra Trading Co., Inc.	R60/16391, etc.	Export value: Net appraised value less 7 1/4%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Baltimore Japanese plywood
R73357	Re J. December 11, 1973	National Cartloading Corp. et al.	R59/1877, etc.	Export value: Net appraised value less 7 1/4%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R73/358	Re, J. December 11, 1973	Robert S. Osgood	R68/8671, etc.	Export value: Net appraised value less 7 1/4%, net packed	Not stated	U.S. v. Gets Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R73/359	Re, J. December 11, 1973	United States Ply- wood Corp.	R68/10106, etc.	Export value: Net appraised value less 7 1/4%, net packed	Not stated	U.S. v. Gets Bros. & Co. et al. (C.A.D. 927)	Tampa Japanese plywood
R73/360	Boe, C.J. December 13, 1973	Ameriam Co., Inc.	R73/8989	Constructed value	\$3.05 each, net packed	Agreed statement of facts	Chicago Radios
R73/361	Boe, C.J. December 14, 1973	A & A Trading Corp. et al.	73-8-00785	Constructed value	As listed on schedule, attached to decision and judgment, in col- umn designated "Claimed Value", for each article im- ported, net packed	Agreed statement of facts	Los Angeles Radios and clock radios assembled in Taiwan from parts imported from Japan
R73/362	Boe, C.J. December 14, 1973	Consolidated Mer- chandising Corp.	R69/9160, etc.	Constructed value	As set forth in schedule attached to decision and judgment	Agreed statement of facts	New York Solid-state (tubeless) radio receivers, with or without batteries, and/or earphones, assem- bled in and ex- ported from Taiwan

R73263	Boe, C. J. December 14, 1973	Consolidated Merch. Corp.	R701672, etc.	Constructed value	As set forth in schedule annexed to decision and judgment	Agreed statement of facts	New York Solid-state (tubeless) radio receivers, together with bak- teries and earphones assembled in and exported from Taiwan
R73264	Boe, C. J. December 14, 1973	Consolidated Mer- chandising Co.	R702190	Constructed value	Tape recorders: \$5.10, each Batteries: \$0.10, each	Agreed statement of facts	New York Tape recorders, Model 415, with batteries, assembled in and exported from Taiwan
R73265	Boe, C. J. December 14, 1973	Jewel Companies, Inc.	72-2-00290	Constructed value	Radio: \$14.36 each, net packed, excluding clock movement Earphones: \$0.06 each, net packed Clock movements: \$3.83, each net packed	Agreed statement of facts	Longview (Portland, Oreg.) Clock radios imported together with ear- phones

Appeal to United States Court of  
Customs and Patent Appeals

APPEAL 74-20.—Standard Brands Paint Co., Inc. v. United States.—  
WOOD MOLDINGS—PICTURE FRAMES—ENTIRE ARTICLES—TSUS.  
Appeal from C.D. 4477.

The importations in this case consist of separate packages of wooden picture frame moldings in a range of styles and lengths. Each package contains two equal lengths of molding with their ends mitered (cut at an angle for joining purposes) and two nails. The merchandise was assessed with duty at 17, 11.5, or 10 percent ad valorem, depending on the date of entry, under item 202.66, Tariff Schedules of the United States, as wood moldings. Plaintiff-appellant claimed that the importations should have been assessed at 12, 8, or 7 percent, depending on the date of entry, under item 206.60 as picture and mirror frames of wood. The court held that the merchandise was properly dutiable as assessed.

It is claimed that the Customs Court erred in not holding and deciding that the articles of merchandise in issue are "picture and mirror frames", provided for in item 206.60, TSUS, as modified by T.D. 68-9; in finding and holding that the importer did not intend to use the imported merchandise as entire articles; in finding and holding that at the time of the importation of the merchandise it was not possible to assemble the imported merchandise to complete a frame; in finding and deciding that at the time of importation the frames the imported merchandise will ultimately form could not be constructed from the imported merchandise; in finding and deciding that the imported merchandise only comes into its existence as an entirety after it has been purchased and assembled by the consumer; in finding and deciding that there was no predictable relationship of any of the imported merchandise with any other portions of the imported merchandise; in finding and deciding that it is necessary to constitute an entirety that unassembled merchandise upon importation be identified with specific components in order to constitute an entirety; in finding and deciding that it was not possible to predict upon importation what component of a single given type or size is intended for use with what other component of another type or size; in holding and deciding that the imported merchandise can not be treated as entireties, where their design, packaging and method of sale are intended to offer more than one possible formation, one with the other; and in holding and deciding that item 202.66, TSUS, encompasses moldings dedicated for use as frames and ready for assembly without further fabrication.

# Index

## U.S. Customs Service

### Foreign currencies:

#### Daily rates:

T.D. No.

Hong Kong dollar, for the period November 19 through 23, 1973..... 74-10

Iran rial, for the period December 3 through 7, 1973..... 74-10

Philippine peso, for the period December 3 through 7, 1973..... 74-10

Singapore dollar, for the period December 3 through 7, 1973..... 74-10

Thailand baht (tical), for the period December 3 through 7, 1973... 74-10

Rates which varied by 5 per centum or more from the quarterly rates published in T.D. 73-294 for the Austria schilling, Belgium franc, Denmark krone, France franc, Germany deutsche mark, India rupee, Italy lira, Japan yen, Netherlands guilder, Portugal escudo, Sweden krona, and Switzerland franc during the period December 10 through 14, 1973..... 74-9

## Customs Court

Appeal to U.S. Court of Customs and Patent Appeals (p. 28) ; appeal:

74-20—Wood moldings; picture frames; entire articles; TSUS, C.D. 4477

Chief value, jewelry boxes of wood in chief value of; household, table or kitchen use, articles of type used for, C.D. 4492

#### Construction:

Rules of the U.S. Customs Court, Rule 8.2, C.D. 4492

Tariff Schedules of the United States:

General Headnotes and Rules of Interpretation:

9(f), C.D. 4492

10(c) (i), C.D. 4492

Item 204.50, C.D. 4492

Item 654.20, C.D. 4492

U.S. Code, title 19, sec. 1514 (1964), C.D. 4492

Cross-motions for summary judgment, C.D. 4492

*Eo nomine* term; jewelry boxes, C.D. 4492

Household, table or kitchen use, articles of type used for; chief value, jewelry boxes of wood in chief value of, C.D. 4492

#### Jewelry boxes:

*Eo nomine* term, C.D. 4492

Of wood; wood, jewelry boxes wholly or in chief value of, C.D. 4492

Legislative history ; Tariff Classification Study, 1960 :

Explanatory and Background Materials, schedule 2, C.D. 4492

Submitting Report, C.D. 4492

Liquidation, void, C.R.D. 73-36

Material, predominant, C.D. 4492

Meaning of term "of," C.D. 4492

Motion :

Papers, physical withdrawal of, C.R.D. 73-36

To dismiss action as prematurely filed, C.R.D. 73-36

"Of," meaning of term, C.D. 4492

Predominant material, C.D. 4492

Prematurely filed, motion to dismiss action as, C.R.D. 73-36

Summary judgment, cross-motions for, C.D. 4492

Void liquidation, C.R.D. 73-36

Withdrawal of motion papers, physical, C.R.D. 73-36

Wood, jewelry boxes wholly or in chief value of ; jewelry boxes of wood, C.D. 4492





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